



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 12, 1996

Fred S. Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary
Texas State Board of Pharmacy
8505 Cross Park Drive, Suite 110
Austin, Texas 78754-4594

OR96-0314

Dear Mr. Brinkley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 35733.

The Texas State Board of Pharmacy (the "board") received a request for a copy of the board's records pertaining to Complaint #94-0338. The request was made by an attorney representing the complainant in a related civil action. You state that you have released to the requestor some of the requested information but contend that the board's investigative files relating to this matter are confidential under article 4542a-1, V.T.C.S., and therefore are excepted from required public disclosure under section 552.101 of the Government Code.¹

Section 17(q) of article 4542a-1 provides as follows:

Board investigative files and all information and materials compiled by the board in connection with an investigation are confidential and are not subject to disclosure under [chapter 552 of the Government Code], and are not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline except that this *information may be disclosed to:*

(1) persons involved with the board in a disciplinary action against the licensee;

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

(2) pharmacist or pharmacy licensing or disciplinary authorities of other jurisdictions;

(3) a pharmaceutical peer review committee as outlined in Section 27A of this Act;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

V.T.C.S. art. 4542a-1, § 17(q) (emphasis added). You assert that the investigative file is confidential under section 17(q) and that the requestor is not one of the persons or entities to whom information may be released.

You state that although the board has issued a warning letter as a result of the investigation, this warning letter does not constitute disciplinary action under subsection (1). We agree. See Open Records Letter No. 95-314 (1995). As none of the entities to whom the board's investigative files may be disclosed under section 17(q) apply, we conclude that the board's investigative file at issue here must be withheld pursuant to section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/RWP/ch

Ref.: ID# 35733

Enclosures: Submitted documents

cc: Ms. Connie Hawkins
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(w/o enclosures)